

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-182716

DATE:

JUL 6, 1976
6,059

MATTER OF: M. Reza Fassihi - Relocation Expenses

DIGEST:

Claimant, unemployed and residing at Alexandria, Virginia, at time of appointment as architect at Fort Sill, Oklahoma, by Army is entitled only to travel and transportation expenses authorized by 5 U.S.C. 5723 for new appointees to manpower shortage positions, although real estate and other additional expenses allowed transferred employees were erroneously authorized. Claimant's contention that he was improperly separated from prior D. C. Government employment and should be considered transferred employee is disputed and unadjudicated, and GAO cannot authorize expenditure of Government funds on mere contention that unjustified personnel action might have occurred.

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By letter dated December 5, 1975, Mr. M. Reza Fassihi requested reconsideration of decision B-182716, March 11, 1975, 54 Comp. Gen. 747. That decision sustained Certificate of Settlement No. Z-2495916 issued by our Transportation and Claims Division (now Claims Division) on January 2, 1973, which disallowed reimbursement for expenses incident to sale of a residence in the amount of \$1,937.50 and held the claimant indebted to the Government for \$226 previously paid to him in error for expenses incident to purchase of a residence. In addition the decision held the claimant liable for amounts paid to him in error for temporary quarters subsistence expenses and per diem for his family.

The record indicates that Mr. Fassihi was employed by the Washington Technical Institute, an educational institution of the District of Columbia, from July 15, 1968, to June 30, 1970, and that there is a dispute between him and the Institute concerning the circumstances surrounding the termination of this employment.

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B-182716

He was given a reappointment contract for the following academic year, September 1, 1970, to June 30, 1971, but apparently he did not perform any services or receive any compensation under this agreement. It is his contention that the Institute wrongfully terminated his employment in breach of this contract in retaliation for his criticism of his department chairman. The Institute, on the other hand, contends that Mr. Fassihi orally resigned his position in a meeting on July 1, 1970, after a dispute with the dean of faculty, and that he failed to appear to begin his duties on September 9, 1970, the date scheduled by the Institute, thereby breaching his contract.

Some 11 months after the termination of his employment with the Washington Technical Institute, while residing in Alexandria, Virginia, and unemployed, Mr. Fassihi received a career conditional appointment to the position of Architect GS-0803-11, a manpower shortage position, in the Department of the Army at Fort Sill, Oklahoma, effective June 1, 1971. His travel order, issued May 26, 1971, authorized, among other things, travel to first duty station, temporary quarters subsistence expenses, real estate expenses, and transportation of dependents.

Mr. Fassihi claimed and was paid for his travel and that of his dependent, temporary quarters subsistence expenses, tolls, trailer rental, and expenses for purchase of a new residence. However, when he subsequently claimed expenses for the sale of his old residence, the Department of the Army disallowed his claim on the basis that he had been erroneously authorized expenses not properly payable for a new appointee to shortage category position, and demanded refund of amounts previously paid for temporary quarters subsistence expenses, per diem for his dependent, and real estate expenses. Mr. Fassihi then pursued his claim in this Office on the grounds that he was assured by the Department that these expenses would be paid by the Government and that he was not a new employee because of his prior employment with the Washington Technical Institute.

Our prior decision, 54 Comp. Gen. 747, supra, held: (1) that Mr. Fassihi's status at the time of his appointment by the Army was that of a new appointee to a manpower shortage position; (2) that consequently he was entitled only to the travel and transportation expenses authorized by 5 U.S.C. § 5723; and (3) that he was, therefore, not entitled to the real estate expenses, temporary quarters subsistence expenses, or per diem for dependents

B-182716

authorized by 5 U.S.C. §§ 5724 and 5724a for employees transferred in the interest of the Government without a break in service or reemployed within 1 year after separation by reason of a reduction in force or transfer of function.

Mr. Fassihi's argument for further consideration appears to be that there was an improper termination of a valid reappointment contract and that, but for that wrongful act, he would have been employed by the Washington Technical Institute at the time he accepted the offer of the Department of the Army. In support of his position that his appointment to the position at Fort Sill should be construed to be a transfer without a break in service Mr. Fassihi has submitted a letter written by his attorney which concludes that he has an excellent chance of winning a court action for breach of contract against the Institute. However, he states that he did not pursue such an action because he was unable to obtain sufficient funds.

Since the issue as to whether Mr. Fassihi was improperly separated from his employment with the Washington Technical Institute has not been adjudicated by an administrative body or court of competent jurisdiction, the opinion of his attorney that he was wrongfully separated is not, in our view, sufficient evidence to overcome the Institute's contention to the contrary. It has long been the established rule that, where there is a dispute as to facts between a claimant and an administrative office, this Office will accept the administrative office's version in the absence of evidence sufficient to overcome the presumption of the correctness thereof. 3 Comp. Gen. 51 (1923); 16 *id.* 325, and 410 (1936); 20 *id.* 573 (1941); 38 *id.* 527 (1959); 46 *id.* 740 (1967). Moreover, the General Accounting Office does not have authority to determine whether Mr. Fassihi has undergone an unjustified or unwarranted personnel action (5 C.F.R. § 550.803(c)) and it cannot authorize the expenditure of Government funds on the mere contention that such an action might have occurred and that it might have affected the claimant's entitlement to benefits.

For the foregoing reasons our prior decision, B-182716, March 11, 1975, 54 Comp. Gen. 747, is affirmed.

~~R. F. REIDER~~

Deputy Comptroller General
of the United States